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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09/914,513	08/28/2001	Jacques Ladyjensky	1471.073	7942

21967 7590 12/20/2002

MCHALE & SLAVIN
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PALM BEACH GARDENS, FL 33410

EXAMINER

NEGRON, ISMAEL

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,513

Applicant(s)

LADYJENSKY, JACQUES

Examiner

Ismael Negron

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 28 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 28 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. Applicant's preliminary amendment filed on August 28, 2002 has been entered. No claims have been amended or added. Claims 2-12 have been cancelled. Independent claim 1 is still pending in this application.

Title

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: **Container for Chemiluminescent Lighting Element.**

Abstract

3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "1" has been used to designate different parts in different embodiments. See Figures 1 and 3. Correction is required.

In addition, note the following:

- reference character "2" in Figures 2 and 4;
- reference character "3" in Figures 2 and 4;
- reference character "4" in Figures 1 and 3;
- reference character "6" in Figures 1 and 3;
- reference character "7" in Figures 2 and 4;
- reference character "8" in Figures 2 and 4;
- reference character "9" in Figures 1 and 3; and
- reference character "12" in Figures 2 and 4.

The applicant is advised that the reference characters must be properly applied, with no single reference character being used for two different parts or for a given part and a modification of such part. See MPEP §608.01(g). Correction is required.

5. Applicant is further advised that this action only exemplifies the objections to the drawings, applicant's cooperation is requested in correcting all the occurrences of the cited, or any other errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (U.S. Pat. 4,635,166).

Cameron discloses an illumination device having:

- **an outer pouch**, Figure 4, reference number 14;
- **the outer pouch being made of a substantially transparent material**, column 3, lines 3-6;
- **the outer pouch material being resilient**, column 3, lines 3-6;
- **an inner pouch located inside the outer pouch**, Figure 4, reference number 26;
- **the inner pouch containing a first chemical component**, Figure 4, reference number 28;
- **the outer pouch containing a second chemical component outside of the inner pouch**, Figure 4, reference number 30;
- **one of the chemical components being an activator solution**, inherent;
- **the inner pouch being breakable by squeezing**, column 2, lines 34-36;
- **breakage of the inner pouch causing the first chemical component to mix with the second chemical component**, column 3, lines 21-25;
- **the chemical causing a chemiluminescent reaction when mixed**, column 3, lines 25 and 26;

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- **an aluminum foil**, Figure 4, reference number 22;
- **the aluminum foil being lined on its interior side by a polymer**, column 3, lines 3-6; and
- **the light given off by the reaction being reflected by the aluminum foil**, column 3, lines 27-31.

Cameron discloses all the limitations of the claims, except the inner pouch being made of aluminum foil, or one of the chemical components being specifically an oxalate solution.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use aluminum foil as the material for the inner pouch of Cameron, to increased the visibility by providing light output from the back surface of the outer pouch. The advantages of increasing the amount of light outputted by the device is evidenced in columns 3 and 4, lines 34-36 and 25-27, respectively.

Regarding the use of an oxalate solution as one of the reacting chemicals, while Cameron is silent as to the nature of the reactants used in the patented invention, the use of such solutions would have flown naturally to one of ordinary skill in the art at the time the claimed invention was made, since oxalate solutions are not only old and well known in the art, but generally the chemical of choice.

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Relevant Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McKay et al. (U.S. Pat. 3,539,794), **Black et al.** (3,720,823), **Gilliam et al.** (U.S. Pat. 3,764,796), **Dubrow et al.** (U.S. Pat. 3,774,022) and **Bay et al.** (U.S. Pat. 5,121,302) disclose chemiluminescent devices having pouch-type containers, some having oxalate solutions and some including metalized materials for forming the container.

Borecki et al. (U.S. Pat. 3,638,786), **Montgomery** (U.S. Pat. 3,847,279) and **Emori** (U.S. Pat. 5,458,244) disclose binary liquid containers using aluminum foil as the material.

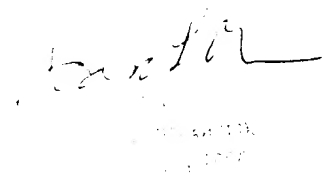
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Negrón whose telephone number is (703) 308-6086. The examiner can normally be reached on Monday-Friday from 9:00 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea, can be reached on (703) 305-4939. The facsimile machine number for the Art Group is (703) 308-7382.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

A handwritten signature in dark ink, possibly reading "Ismael Negrón", is written over a faint, circular official stamp. The stamp contains some illegible text, likely a date or official designation.

Inr

December 14, 2002